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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,763	07/25/2001	Mohamed Bakri Assoumani	U0134207	2199
140	7590	02/23/2004	EXAMINER PRATT, HELEN F	
LADAS & PARRY 26 WEST 61ST STREET NEW YORK, NY 10023			ART UNIT 1761	PAPER NUMBER

DATE MAILED: 02/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/830,763

Applicant(s)

ASSOUMANI, MOHAMED BAKRI

Examiner

Helen F. Pratt

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12-23-04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21-32 and 34-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21, 22, 24-32, 34-36 is/are rejected.
- 7) ☒ Claim(s) 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

Art Unit: 1761

### **DETAILED ACTION**

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 21-22, 24-32, 34-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "said foodstuff being one in which the presence of the calcareous residue improves a property of the edible product as compared to the product free of said residue" in claim 21 is a relative term which renders the claim indefinite. The phrase above is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21, 22, 24-32, 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Auchincloss (WO 98/33508). The claims are rejected for the reasons

Art Unit: 1761

of record cited in the last office action and for these further reasons. Claim 21 further requires that the addition of the calcareous residue improves a property of the edible product such as texture, mouth feel, strength, shelf life and flavor. However, nothing has been shown that the compositions of Auchincloss would not also have improved characteristics. The reference discloses that from 0.5 to 3 grams of the corallinaceae product can be used per day (page 6, lines 5-8) and that an emulsion of the composition can be added to a foodstuff (page 25, lines 8-14). Nothing is seen that any of the claimed characteristics would not have been improved particularly as the reference discloses that the use of calcium carbonate gives a chalky taste when used alone (page 20, lines 24-32). Applicants in one embodiment also add the corallinaceae to fatty products in the fat phase, which stabilizes the emulsion (page 3, lines 30-40). Emulsion stability improves various characteristics such as texture, mouth feel, strength and shelf life, because the emulsions do not break down. Therefore, it would have been obvious to add the corallinaceae to food products with the expectation that various characteristics as claimed would have been improved.

Claims 35 and 36 are to particular foodstuffs such as pasta and biscuits, which improve the characteristics of the foods. However, the reference discloses the use of bakery products and bread. Certainly, biscuits can be bakery products, and pasta is also made from flour and eggs as in bakery products. Therefore, the types of products claimed are similar to those disclosed. As the composition has been shown, it is seen that these characteristics have been shown. Also, as above the amount of

Art Unit: 1761

improvement is relative, and nothing has been shown that adding the calcium of the reference to food products would not have resulted in an improved product.

Allowable subject matter

Claim 23 would be allowable as before if the limitations of the independent claims were incorporated into it.

ARGUMENTS

Applicant's arguments filed 12-23-03 have been fully considered but they are not persuasive. Applicants argue that there is not expectation of success by adding the claimed residue to the food products. However, as above, the reference recognizes that just adding calcium carbonate provides a chalky taste, but that the coated corallinaceae does not. Nothing has been found in the reference to show that the addition of a calcium source would result in the deterioration of the product particularly on page 1, 2<sup>nd</sup> para. as cited by Applicant.

Applicant argues that it would not have been obvious to optimize particular amounts of the corallinaceae and that the particular characteristics were not recognized which are claimed to be improved. However, applicants are presenting composition claims and the composition has been shown. If a therapeutic amount of .5 to 3 grams is added to a food composition, this would have been within the claimed amount. If applicants claim as in reference to the 112 arguments, that it would have been within the skill of the ordinary worker to test a foodstuff with and without the claimed residue to improve product characteristics, then certainly, it would have been within the skill of the

Art Unit: 1761

ordinary worker to add enough of the calcium composition to make the product acceptable and thereby make an improvement (page 6 and 7 of arguments).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HP 2-17-04

*H. Pratt*  
HELEN PRATT  
PRIMARY EXAMINER